

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 496 of 2001

in

SPECIAL CIVIL APPLICATION No 1000 of 2001

With

LETTERS PATENT APPEALS NOS.497, 498 and 481 of 2001

With

CIVIL APPLICATIONS NOS.6155,6157, 6159 & 5773 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE K.R.VYAS

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

SALIM @ SALIM JOL MOHD QURESHI

Appearance:

1. LETTERS PATENT APPEAL No. 496 of 2001
MS.MANISHA LAVKUMAR,AGP for Appellant No.
MR HR PRAJAPATI for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

Date of decision: 28/06/2001

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

1. These appeals at the instance of State of Gujarat are preferred against the impugned order of the learned single judge. In Letters Patent Appeal No. 496 of 2001, the impugned order is passed on 13.2.2001 and has been relied upon in other connected matters being Letters Patent Appeals Nos. 497 of 2001 and 498 of 2001. In Letters Patent Appeal No. 481 of 2001, impugned order is passed on 25.4.2001. The respondents (hereinafter referred to as 'detenus') have challenged their detention under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'PASA'). The learned single judge adopted an extraordinary course of quashing the orders of detention and directing release of the detenus without giving any notice or opportunity of hearing to the detaining authority. The learned single judge has passed a detailed order running into several pages, passing general remarks and strictures that the concerned officers may have deliberately left out legal lacunas and defects in the orders of detention so that ultimately they are not sustained in the Court of Law. The learned single judge also came to the conclusion that the order of detention is patently vitiated by a serious flaw inasmuch as the detaining authority has not made any independent inquiry on the question of fear expressed by the witnesses. It is observed that nondisclosure of identity and information about witnesses resulted into denial of opportunity to the detenus to represent against the order of detention.

2. The learned Assistant Government Pleader Ms. Manisha Lavkumar, while assailing the order passed by the learned single judge, relied upon the Full Bench judgment of this Court in the case of Chandrakant N.Patel Vs. State of Gujarat, reported in 1994(1) GLR 761. The contention advanced before the learned single judge was that the power of nondisclosure of identity and information about witnesses under section 9(2) of the PASA was an empty formality. The learned single judge, therefore, held that giving a notice to the State and hearing the State on the question would also be an empty formality and, therefore, thought it fit to hear the matter ex-parte against the State and quash the detention orders.

3. On behalf of detenus, Mr. Prajapati and Mr. Niranjana Barot, learned Counsel supported the order of the learned single judge, contending that even the

affidavit filed by the State does not disclose that any independent inquiry was held by the detaining authority on the fear expressed by the witnesses.

4. As held by the Full Bench in the case of Chandrakant (supra), whether the privilege of non disclosure of names and information about witnesses under section 9(2) has been exercised bonafide and properly or not, is a question to be decided on the facts of each case. In the affidavit in reply which is now submitted in appeal, an attempt is made on the part of the detaining authority to state that not only that the statements of witnesses were recorded by the detaining authority himself in their presence, but he had also made an independent inquiry for coming to the conclusion that there was fear and apprehension expressed by the witnesses and it was on some objective material and, therefore, privilege of nondisclosure of identity of witnesses was rightly claimed.

5. We are merely stating the contentions raised by the parties and we make it clear that we are not expressing any opinion on the merits of the order. We are only considering whether the learned single judge was right in adopting the procedure of not issuing notice and not affording an opportunity of hearing to the detaining authority. We are deciding the case at admission stage and in our considered opinion, such a course adopted by the learned single judge was not warranted by the provisions of the Act. What is to be noted is that the learned single judge himself, after passing a detailed order, stayed the order of release for a period of one month to enable the aggrieved party to approach this Court in Letters Patent Appeal. That was the course adopted by the learned single judge instead of granting time to the State to file reply affidavit or at least granting opportunity to the Government Pleader. Whether in these particular cases, privilege of nondisclosure of identity of witnesses was rightly claimed in accordance with law or not is a matter which could have been decided only after the detaining authority was granted opportunity to file affidavit to substantiate the objective material on the basis of which he formed reasonable opinion that the witnesses were rightly expressing fear and insisting for nondisclosure of their names.

6. For the reasons aforesaid, we cannot approve the procedure adopted by the learned judge in releasing the detenus by hearing their learned Counsel at admission stage without notice of hearing to the detaining authority. Consequently, we set aside the order of the learned single judge dated 13.2.2001 impugned in Letters Patent Appeals Nos. 496, 497 and 498 of 2001 and order

dated 25.4.2001 impugned in Letters Patent Appeal No. 481 of 2001 and send back the cases to the appropriate learned single judge for final hearing of the matters at an early date. Reply affidavit is now placed on the record of appeals and, therefore, it is made clear that no further notice now will be required to be issued to the respondents in the main petitions. The learned AGP Ms.Manisha Lavkumar waives service. Let all these matters be now taken up by the learned single judge for final hearing in order of dates of detention.

Civil Applications accordingly stand disposed of.

(D.M.Dharmadhikari,CJ)

(K.R.Vyas, J.)

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